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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

REPLY COMMENTS ON THIRD FURTHER NOTICE OF PROPOSED RULEMAKING BY AUSTIN, TEXAS; DAYTON, OHIO; DUBUQUE, IOWA; GILLETTE, WYOMING; KING COUNTY, WASHINGTON; MONTGOMERY COUNTY, MARYLAND; ST. LOUIS, MISSOURI; AND WADSWORTH, OHIO

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SUMMARY

1. Austin, Texas; Dayton, Ohio; Dubuque, Iowa; Gillette, Wyoming; King County, Washington; Montgomery County, Maryland; St. Louis, Missouri; and Wadsworth, Ohio (the "Coalition") hereby submit reply comments in response to comments filed in the above-captioned proceeding.[1]

2. The evidence reveals that benchmark rates cover upgrade costs, and the cable industry has not come forward with any actual cost data to rebut this evidence. Nor has the industry

[1] First Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428 (August 27, 1993) ("Third NPRM").

proposed a method for dealing with upgrade costs that is simpler or fairer than a cost of service proceeding.

3. The comments do not offer any rationale for permitting operators that have recently begun or completed system upgrades to hike rates up to benchmark levels. The FCC was correct in its initial conclusion that prices voluntarily charged by operators should be presumed to cover costs and provide at least a reasonable profit. Operators may challenge this presumption on a case-by-case basis, by submitting a cost of service showing.

4. None of the methods proposed in the Third NPRM offers a viable method for accounting for channel additions and deletions over the long term. In the short term, however, the method tentatively accepted by the FCC could be used to account for channel changes in some (but not all) instances. The FCC must recognize, and protect against opportunities for gaming.

5. The operators have not offered convincing evidence that they should be permitted to choose different regulatory methods for different tiers. They have not responded to the arguments in favor of requiring a single regulatory approach. The FCC's preliminary determination is correct that a single regulatory method must be used for all tiers.

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Austin, Texas; Dayton, Ohio; Dubuque, Iowa; Gillette, Wyoming; King County, Washington; Montgomery County, Maryland; St. Louis, Missouri; and Wadsworth, Ohio (the "Coalition") hereby submit reply comments in response to comments filed in the above-captioned proceeding.[2]

I. UPGRADE COSTS SHOULD NOT BE PASSED THROUGH AS EXTERNAL COSTS

A. There is No Basis for Giving External Cost Treatment for System Upgrades

In its initial comments, the Coalition showed that existing benchmarks cover upgrade costs. See Coalition comments, Exh. A,

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[2] First Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-428 (August 27, 1993) ("Third NPRM").

Jay Smith Report at 2-4. The industry's assertions to the contrary are either unsupported or incredible.[3]

Viacom International, Inc. ("Viacom") asserts, for example, that operators typically adjust their rates to recover upgrade costs over many years. See Viacom comments at 15. But Viacom does not show or even claim that costs of upgrades are not reflected in rates charged before the operator begins system improvements. See Coalition comments at 4. Nor do Viacom's comments refute the claim that upgrade costs are already reflected in the FCC's benchmarks. Id. at 3.

The FCC has asked for actual cost data as to whether external treatment of upgrade costs is justified. The bulk of that evidence is in the exclusive control of cable operators and they have failed to come forward with it.[4] The only reasonable conclusion is that the evidence does not support the operators'

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[3] Continental purports to show that benchmarks will undercompensate for upgrades. See Continental comments, Exh. A. However, Continental treats the upgrade as an additional incremental cost, rather than as replacing existing capital that would otherwise be expended. It ignores the fact that upgrades eliminate maintenance and replacement that would have to be done, and decrease future costs of maintenance. It also ignores the fact that such improvements prolong the useful life of the system.

[4] While the operators' comments are replete with claims that dire consequences will result if upgrades cannot be passed through, they offer no solid proof of this. For example, Falcon Cable TV et al. alleges, without any evidentiary support, that operators rarely recover costs associated with upgrades. See Falcon Cable TV et al. comments at 13. A claim that operators lose money every time they upgrade is incredible, and should not be accepted without proof.

claims.[5] The cable industry has not shown that current benchmarks and price caps will not cover upgrade costs, at least in most instances. The only cost evidence of which the Coalition is aware shows that benchmarks will cover upgrade costs. The industry does not raise a serious claim that, in any instance where upgrade costs are not covered by benchmarks, the cost of service alternative will not provide adequate relief. The FCC should not amend its rules to account for a problem that has not been shown to exist. To allow upgrade costs to be passed through above benchmarks without a cost of service showing will likely overcompensate operators and violate Congress' mandate to eradicate unreasonable cable rates.

Operators make a general, unsupported assertion that development will be stifled unless upgrade costs are treated as external costs. Tele-Communications, Inc. ("TCI") claims, for example, that not allowing pass throughs of upgrade costs "would create disincentives" for operators to agree to provide such upgrades. See TCI comments at 9. See also Viacom comments at 14. Assuming this were true, it would show only that operators will not agree to upgrade requirements that are not financially viable.[6] As a general rule, this is not a bad result. It

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[5] In contrast, the Coalition has presented cost information to which it has access, and that data shows that current benchmarks cover upgrade costs. See Coalition comments, Exh. A, Jay Smith Report at 2-4.

[6] Such a statement refutes unsupported claims by other operators that franchising authorities will force them into providing new services no one wants. See Continental comments at 18. Continental also fails to explain why governmental

produces the types of services and public benefits that would exist in a competitive environment, and certainly is preferable to a system TCI envisions, which would encourage operators to upgrade simply to increase rates.

The converse of the operators' claim is true: if pass throughs are automatically permitted, franchising authorities will be reluctant to include upgrade requirements in franchises in order to prevent rate increases. In the end, subscribers will be the losers. See TCI comments at 9 (recognizing upgrades benefit subscribers).

B. There is No Reasonable Way to Pass Through Upgrade Costs That is Simpler Than a Cost of Service Showing

The comments filed in this proceeding reveal the complexities of attempting to treat costs of system upgrades as external costs. Among other things, the comments demonstrate that there is no easy way to determine such essential matters as what constitutes an "upgrade",[7] and whether to subject to external treatment only upgrade requirements expressly contained

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regulators, whose job it is to protect the public interest, would have any desire to make the operator provide services no one wants.

[7] See National Cable Television Association ("NCTA") comments at 13 n. 26. NCTA claims that determining whether an upgrade has occurred should not be difficult, and proposes its own definition of what constitutes an upgrade. However, it is obvious from NCTA's proposal that defining what constitutes an upgrade is a highly contentious matter. For example, NCTA contends that activating five new channels or extending facilities to previously unserved areas would constitute a system "upgrade." Under the NCTA's definition of "upgrade," an operator would have the power to wire the richest area only, and then pass through costs for any subsequent extensions; the operator would be rewarded for cream-skimming.

in the franchise, or whether to also include upgrades "agreed to" by the franchising authority.[8] Even more problematic are concerns about what to do if the franchise contains non-specific provisions, such as requiring "state of the art" technology. See National Association of Telecommunications Officers and Advisors, et al. ("NATOA") comments at 6. Another significant issue is how to allocate costs where a single system serves more than one franchise area, and not all the franchises contain the same upgrade requirements. See Community Antenna Television Association ("CATA") comments at 11; NATOA comments at 5.

Most difficult of all, perhaps, is determining the "cost" of an upgrade. TCI suggests allowing operators to make a "reasonable demonstration, up to and including full cost of service showings." See TCI comments at 11. It offers no suggestion as to what a "reasonable demonstration" might be. Viacom suggests that upgrades be governed "solely" by the FCC's cost of service standards. See Viacom comments at 16. This proposal offers no explanation of why or how this would be simpler than an ordinary cost of service proceeding. Others urge the FCC to adopt standards for adjusting benchmark rates to reflect upgrade costs (yet another task for the FCC), while giving no guidance at all as to what standards would be appropriate. See CATA comments at 11.

GTE Service Corp. ("GTE") suggests that upgrade costs be passed through (1) where the upgrade is truly beyond the control

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[8] See TCI comments at 10; NCTA comments at 19 n. 36.

of the operator, and (2) only to the extent that the cost would not otherwise have been incurred. See GTE comments at 12. A closer look at this proposal reveals why, as a practical matter, external cost treatment of upgrades is unworkable. First, an agreement to upgrade is never completely beyond the operator's control, even where it is contained in a franchise. The recent comments filed by the cable industry concede this. Cable operators claim that failing to allow external cost treatment of upgrades will deter operators from signing agreements containing upgrade requirements. See TCI comments at 9; Viacom comments at 14. Thus, by the operators' own admission, they have discretion as to whether to agree to such requirements. As TKR Cable Company ("TKR") states, upgrade provisions contained in franchises are not unilaterally forced upon cable operators; rather, they are voluntarily agreed to. See TKR comments at 4.

Second, it is impossible to know what costs "would not have been incurred otherwise and [are] not already reflected in the price cap." See GTE comments at 12. Operators should be upgrading because of ordinary wear and tear and to take advantage of new technology, whether or not a requirement is contained in the franchise. They obtain tremendous benefits from upgrading the system. See Coalition comments at 5. See also TKR comments at 11, noting that, among other things, upgrades will improve equipment reliability and enable "full communications interfacing capability, including ... a la carte programming, increased pay-per-view and a full video and data platform."[9] Thus, it is impossible to know what enhancements the operator would have made absent a franchise requirement. See e.g., TKR comments at 11 (admitting that, if upgrade costs are passed through, TKR will "voluntarily" upgrade its system to 78 channels, although only required to upgrade to 60 channels). As important, it is extremely difficult to determine what the difference in price is, over the long term, between the system built and the system the operator would have built.[10] Allowing upgrade costs to be passed through will likely lead some operators to add capacity merely to raise rates. It is also difficult to determine what costs the operator incurs that it would not have incurred if it merely had maintained the existing system. See Coalition comments at 5. Further, it will be extraordinarily difficult to determine whether the operator's costs have in effect increased compared to the costs of the original investment; cost savings achieved as a result of the upgrade would have to offset upgrade costs. Id. at 6.

While numerous commenters propose to allow external cost treatment of system upgrades, none of their filings offer even the beginnings of a reasonable methodology that would be simpler than a cost of service proceeding. As a general rule, no rate

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[9] TKR does not explain why it would be fair to require subscribers to regulated services to pay for the cost of system upgrades that TKR admits will enhance its unregulated services, as well as reduce costs such as equipment repairs.

[10] It is even more difficult to properly allocate costs to particular tiers.

increase is needed. But, where it is, the best method is to require the operator to make a cost of service showing.[11]

II. OPERATORS WITH RATES BELOW THE BENCHMARK SHOULD NOT BE PERMITTED TO "JUMP UP" TO BENCHMARKS LEVELS

The comments submitted by cable operators generally urge the FCC to permit operators that have recently begun or completed upgrades to raise rates to benchmark levels. However, the comments have not offered any rationale for why such a rate adjustment is necessary. Nor have operators substantiated their claims that their current rates do not fully account for upgrade costs. Absent such evidence, there is no reason for the FCC to deviate from its current presumption that below-benchmark rates voluntarily charged by operators cover costs plus at least a reasonable mark-up. In the eventuality that costs are not covered, the operator is free to make a cost of service showing. There is no reason for the possible exception to swallow the more reasonable rule already established by the FCC.

III. THE FCC SHOULD REJECT THE CABLE INDUSTRY'S PROPOSALS FOR CALCULATING CHANNEL ADDITIONS AND DELETIONS

A. None of the Methods Proposed by the FCC Presents a Viable Long-Term Approach for Calculating Changes in the Number of Channels

Of the three methods suggested in the Third NPRM for calculating changes in the number of channels, the Coalition

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[11] The FCC could revisit the issue in the future if it finds that justified cost of service showings routinely follow system upgrades. But there is no need, on the existing record, for the FCC to create more work for itself or franchising authorities by allowing pass throughs of upgrade costs.

continues to favor the FCC's proposed method in the short term, at least where system channel capacity changes and the number of channels on regulated tiers increases. However, the comments in this proceeding demonstrate some of the fundamental flaws in the FCC's benchmarks. The Coalition continues to believe that, ultimately, cost-based benchmarks should be substituted for the FCC's current price-based benchmarks. For example, the existing benchmarks, even considering the FCC's proposed methods for adjusting for changes in the number of channels, do not adequately account for economies of scale. This deficiency will be even more striking when the industry begins to utilize compression technology. The Coalition also continues to believe that pass throughs are not necessary or appropriate under the FCC's system.[12]

Nevertheless, if the FCC adopts its proposed method, it must clarify what will happen in the event that a tier is completely eliminated or where there is a dramatic decrease in the number of channels where total system capacity does not change. For example, the FCC's formula plainly does not work if an operator completely eliminates its non-basic tier, thereby decreasing the total number of channels, the operator should not be permitted to

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[12] As the FCC's proposed cost of service methods recognize, as operators add unregulated channels, basic and expanded basis subscribers should pay less and less of the total plant costs. The benchmarks, however, do not theoretically change even if an operator adds 300 channels of capacity to its system; indeed, under the industry's pass through proposals, subscribers would pay for the upgrade, but receive none of the benefit.

increase basic service rates. In such cases, the best approach may be simply to reduce rates to reflect the reduction in programming costs as regular service tiers.[13] The FCC's formula appears to work better in cases where an operator substantially

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[13] The FCC should recognize that its system does not work well in many cases. For example: imagine a system serving over 10,000 subscribers, and initially providing 40 regulated channels, 10 of which are non-satellite channels (carried on basic) and 30 of which are satellite channels (carried on an expanded tier). The cost of the basic programming service is $0.00 (or near zero) and the cost of expanded basic programming is $3.00. Next, assume the operator drops the entire expanded tier, perhaps replacing it with 30 pay-per-view channels (in fact, some operators have purported to eliminate expanded tiers, or transform them into "premium" tiers). The benchmark prior to the shift was 55.9 cents. Under the FCC's formula, it appears the operator should be required to: subtract the 7.5 cents per-channel charge for programming ($3.00/40 total regulated channels) to reduce the benchmark to 48.4 cents. The operator would then recalculate the benchmark for the new number of channels. The benchmark appears to rise dramatically -- to $1.36 per channel or 243% (note that this is because the benchmark tables erroneously assume that a system with any 10 basic channels is a low capacity, high cost system. In fact there is a good argument that the operator's costs should not increase), leading to a new benchmark of (.484 x 243% = $1.17 per channel plus programming expenses), a clearly irrational result. In short, operators would contend the FCC is forcing them to double rates. If, instead, the reduction in program costs were spread across the new number of channels ($3.00 for 10 channels v. $3.00 for 40 channels) the charge would result in the permitted charge being slightly increased (55.5¢ - 30¢ = 25.9¢ x 243% = 62.9¢ per channel). That result may be more palatable, because the increase is low, and because it allows regulated subscribers to benefit more fully from the reduction in program costs. However, it is not clear why basic rates should increase at all, at least assuming system capacity has not changed. One would instead expect that if total system capacity did not change, and the actual programming costs for regulated tiers substantially dropped (in the example, from $3.00 to $0.00), the total price paid on a per-channel basis should also drop. This suggests that at least in the circumstance described above -- and in most cases involving decreases in channel capacity -- the FCC's proposed method should not be used. It also suggests that the FCC should allow greater latitude to local authorities in reviewing and determining rates associated with channel charges, subject to the FCC's review.

increases the number of channels it provides (even if the new channels are not on a particular regulated tier); in those cases benchmark rates should decrease to reflect the economies of scale.[14]

In devising a final rule, the Commission should recognize that its benchmarks are intended to reflect the average reasonable rate, based on all regulated service tiers. The benchmarks thus attempt to account for an average cost of programming for each channel on regulated services. However, as operators admit, programming costs for non-basic tiers are higher than programming costs for basic tiers. See Continental comments at 2. Many cable operators urge the FCC to apply whichever method it adopts only to the tier on which channels have been added or deleted. See e.g., Time Warner comments at 4. However, for the reason explained above, such a tier-specific application could lead to extremely inappropriate consequences. For example, under a tier-specific approach, rates might change, and revenues might increase, even if the operator merely shifted all satellite channels from the basic tier to an expanded tier.[15] NCTA claims

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[14] NCTA points out that, under a tier-neutral approach, basic rates might decrease even where there was no change in the number of basic channels provided. See NCTA comments at 7. This is a reasonable result. In general, because per-channel costs decrease as the number of channels increase, it is appropriate for rates to decrease with channel expansion, even for tiers that are not directly affected by the change.

[15] When channels were added to the expanded tier, expanded tier subscribers would be forced to pay the actual costs of those channels, even though before the change occurred, the cost of all services was already included in the per-channel price for the regulated tiers. NCTA's method also leads to anomolous results

that, if applied on a tier-neutral basis, an operator's overall revenues could decline as a result of adding more channels -- a result consistent with the FCC's regression analysis. See NCTA comments at 4. However, if applied on a tier-specific basis, the operator's revenues might increase, as NCTA acknowledges. Id. at 6 n. 10.

In addition, a tier-specific approach is more complicated, doubling or tripling the potential benchmark adjustments. It simply increases opportunities for operators to game the system.

B. The FCC Should Make Clear that Operators Must Comply With Procedural Requirements Applicable to Rate Changes When Adjusting Rates to Account for Channel Changes

Some commenters have suggested that the FCC should adopt abbreviated procedures for operators seeking to adjust rates to account for channel additions or deletions. The Coalition does not believe that such abridged procedures are necessary or fair. Operators generally have substantial advance notice before they activate or deactivate channels or alter the programming.[16] In most cases, changing the number of channels is within the

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if the operator eliminates channels from one tier (subscribers continue to pay a benchmark tied to a price that included costs associated with expensive channels that are no longer provided). In short, the NCTA proposal doesn't work whether one adds or subtracts channels.

[16] Even when rates were not regulated, operators agreed to give advance notice of channel changes. For example, operators in Wadsworth, Ohio and St. Louis, Missouri agreed to give advance notice prior to implementing programming changes.

operator's control,[17] and there is no reason an operator should not be required to give the same notice and be subject to the same review as it is with respect to other rate changes. Operators claim that the procedural requirements will harm subscribers by delaying channel increases. But the procedural requirements apply only to rate changes; an operator is free to add (but not delete) channels without immediately implementing a rate increase.

Several operators also ask the FCC to establish special procedures to protect information about programming costs. The alternatives proposed by the operators -- either self-certification or verification by a third party -- do not provide adequate assurance that the appropriate calculations and adjustments have been made. Without access to the underlying information, franchising authorities and the FCC cannot ensure that rates have been adjusted in accordance with FCC rules and that subscribers are not being forced to pay unreasonable rates.[18]

The mere fact that the operator purports to comply with FCC rules cannot support denying access to even sensitive information

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[17] In any instance where the operator did not have control over, or advance notice of, a channel change, that issue could be addressed on a case-specific basis.

[18] Operators have long attributed rate hikes to increased programming costs, but now are reluctant to present any proof. Without access to the actual cost data, the scenario plays out like a modern day version of the emperor's new clothes. Everyone has heard about escalating program costs, but no one has actually seen them, and regulators are now asked to rely on secondhand sources to tell them what these costs look like.

to verify it. See Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608, 620 (D.C. Cir. 1965, cert. denied, 384 U.S. 941 (1961) (regulator has an obligation to protect the public interest); MacDonald v. Federal Power Commission, 505 F.2d 355, 364 (D.C. Cir. 1974), cert. denied, 421 U.S. 912 (1975) (regulator must scrutinize producers "individual costs in order to ensure that the producer's profit margin is not thereby raised to an unreasonable level"). Nor can the FCC give an intermediary the right to effectively resolve the issue. The regulators themselves need to be able to carefully review the underlying cost data.

Moreover, even where the calculations were done correctly, the operator might nevertheless have achieved an unwarranted rate increase as a result of gaming the FCC's system.[19] The FCC should make clear that the franchising authority can refuse to allow rate adjustments where the changes result from such gaming. The FCC would be able to review those decisions pursuant to its authority to prevent evasions of rate regulation.[20]

The FCC has already addressed the issue of protection of proprietary information. Franchising authorities and operators have asked the FCC to clarify whether local, state or federal rules will prevail in case of a conflict. With that

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[19] Any question that the system can be gamed is readily dispelled by a review of NCTA's comments, reflecting a plethora of ways to manipulate the system proposed by the FCC.

[20] See note 13.

clarification, existing rules and procedures are adequate to protect operators' concerns about confidentiality.

IV. THE FCC SHOULD REQUIRE OPERATORS TO USE THE SAME REGULATORY METHOD FOR ALL TIERS

The cable industry has raised few new arguments in defense of its claim that it should be allowed to pick and choose between regulatory methods for different tiers of service. It again asserts that requiring a single regulatory method will increase the number of cost of service showings. See NCTA comments at 15. But the FCC has already recognized, correctly, that the converse may be true. Operators claim that requiring a single regulatory approach will prevent them from being able to offer a low-priced basic tier. See Continental comments at 2. However, allowing different regulatory methods for different tiers provides no guarantee that the operator will offer a low-priced basic tier.[21] Nor does requiring an operator to choose a single regulatory method prevent it from offering a low-priced tier. Under either method, the operator could provide a low-priced basic tier.

Operators claim that requiring a single regulatory approach will substantially increase administrative burdens. See TCI comments at 6. The Coalition and other commenters have offered simple and viable suggestions for reducing duplicative

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[21] As noted below, allowing operators to pick one regulatory method for basic and another for expanded basic will permit the operator to charge the highest possible rate for both basic and non-basic tiers.

proceedings. See Coalition comments at 10-11; NATOA comments at 12. In addition, comments by operators themselves belie this claim. They note that the FCC will readily be able to determine costs and the rate of return for all tiers, including basic service. See Continental comments at 4. Likewise, Viacom states that operators presenting a cost of service proceeding before the FCC with respect to non-basic rates "could easily derive the cost-based rate for both tiers and compare it to the benchmark rates." See Viacom comments at 18 (emphasis added).

Merely knowing that the operator is receiving an excessive return overall for regulated services does not eliminate the problem, however. If the operator is allowed to rely on benchmark rates for its basic tier, a finding that the operator is receiving an excessive rate overall might not be correctable; the operator might be able to continue to rely on the excessive benchmark rate for basic service, and also increase its rate for non-basic service to reflect the costs of that tier.

Operators suggest that it is irrational to require an operator to justify a rate at or below the benchmark, which the FCC has already presumed to be reasonable, any time it seeks to justify an above-benchmark rate for another tier. See Time Warner comments at 9. However, as the Massachusetts Community Antenna Television Commission ("Massachusetts Commission") points out, the benchmarks represent rates based on average costs of providing all tiers. Massachusetts Commission comments at 5-6. Operators claim that costs of non-basic tiers exceed costs of the basic tier. See Continental comments at 2. The benchmarks average prices across tiers; therefore, the benchmark might well represent an excessive rate for basic service alone. If the operator were permitted to choose different regulatory methods, it could easily obtain a combined rate that was unreasonably high.[22]

Industry comments argue that concerns about gaming are exaggerated. Time Warner, for instance, says that it has "publicly stated" that it will use cost of service regulation only in exceptional cases. See Time Warner comments at 8. Unfortunately, such public statements do not constitute binding promises. Continental claims that only in rare instances will an above-benchmark rate be justified for fewer than all tiers. See Continental comments at 3. However, Continental offers no proof that this is true (nor is it in keeping with operators' insistence on being permitted to choose different regulatory approaches for different tiers).[23] Operators also claim that

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[22] To take a simple example, if the reasonable rate for basic service were $0.20 per channel and the reasonable rate for non-basic service of the same size were $0.30 per channel, the benchmark rate for the system should be $0.25 per channel (if the benchmarks were accurate). However, if a cost of service review were limited to the operator's non-basic tier, it would continue to be able to charge an unjustified rate of $0.25 for each basic channel and would be permitted to charge $0.30 for non-basic channels.

[23] Continental claims that cost of service showings would in most cases justify above-benchmark rates for all tiers. See Continental comments at 3. Continental and other operators assert that determining the cost of service for all tiers will be easy whenever a cost of service showing is presented for any tier. See Continental comments at 4; Viacom comments at 18. In light of these claims, it is unclear why the industry objects so

concerns about shifting of programming are unwarranted, because changes in programming costs will be reflected as external cost increases or decreases. But operators ignore even greater gaming concerns, noted by other commenters, such as general cost misallocations and forum shopping. See Coalition comments at 8-9; Municipal Franchising Authorities comments at 3-4. The cable industry has not raised any arguments that would justify using different regulatory methods for different tiers, and it has not refuted arguments that support requiring a single regulatory approach.

Respectfully submitted,

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